

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
EXPEDITED RCRA SETTLEMENT AGREEMENT

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

Docket No. RCRA-07-2001-0010

Inspection Date: March 28-29, 2000

Berry Wood Products, Inc. (Respondent), violated the standards applicable to wood treatment facilities pursuant to Section 3005 of the Solid Waste Disposal Act, 42 U.S.C. § 6925, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, and RSMo 260.390(1) as noted on the attached FINDINGS AND ALLEGED VIOLATIONS FORM (Form), which is hereby incorporated by reference.

If the Respondent does not sign and return this Expedited RCRA Settlement Agreement (Agreement) within the time specified by the U.S. Environmental Protection Agency (EPA), the proposed Agreement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

The parties are authorized to enter into this Agreement under the authority vested in the Administrator of EPA by Section 3008 of RCRA, 42 U.S.C. § 6928. The parties enter into this Agreement in order to settle the civil violations described in the Form for a reduced penalty of \$25,162.80. This settlement is subject to the following terms and conditions:

EPA finds the Respondent's conduct is subject to Section 3005 of RCRA and RSMO 260.390(1), as described in those statutes. For purposes of this Agreement, Respondent admits it is subject to Section 3005 and that EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the Form. Respondent neither admits or denies the factual allegations contained in this Agreement, and waives any objections it may have to EPA's

jurisdiction. Respondent consents to the assessment of the penalty stated above. Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that it is subject to the standards applicable to woodtreaters and that the violations are being corrected.

Respondent shall pay a civil penalty of \$25,162.80 in eight equal payments of \$3,145.35 each. The payments shall be paid quarterly for a period of two years following entry of this Agreement, with the first payment due within 30 calendar days of entry of this Agreement. Respondent shall make the payments by certified check payable to the "United States Treasury" mailed to EPA-Region VII, c/o Mellon Bank, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251, and has noted on the penalty payment check "EPA" and the docket number of this case RCRA-07-2001-0010.

In addition to the payment of the penalty stated above, Respondent agrees, as a generator of hazardous waste subject to the requirements of §§ 260.350-260.434 RSMo and 10 C.S.R. 25, to take the following actions within the periods below:

(a) Upon the effective date of this Agreement, Respondent shall immediately cease all releases of pentachlorophenol wood treatment preservative product and wastes, including exhaust, outside of the retorts in accordance with 10 C.S.R. 25-7.265(1) and 10 C.S.R. 25-7.265(2) referencing 40 C.F.R. § 265.31.

(b) Within thirty (30) days of the effective date of this Agreement, Respondent shall make a hazardous waste determination in accordance with 10 C.S.R. 25-262(1) and 10 C.S.R. 25-262(2) referencing 40 C.F.R. § 262.11 on all solid waste streams generated by Respondent. Solid waste streams generated at wood treatment facilities include but are not limited to: sludge,

waste preservative, wood chips, splinters, sand sawdust, banding, gloves, personal protective equipment, etc. Within seven (7) days of making a determination, Respondent shall submit to EPA such documentation showing the determination has been performed. Such determination shall include documentation of the following:

1. A description of the process that generated the waste;
2. A determination of whether or not the waste has been excluded from regulation under 40 C.F.R. Part 261;
3. A determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and
4. A determination of whether or not the waste is identified in 40 C.F.R. Part 261, Subpart C. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using the procedure set forth in Subpart C of 40 C.F.R. Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. If knowledge of the process is used, please provide a detailed explanation regarding the basis for this knowledge and your reasoning.

(c) Within sixty (60) days of the effective date of this Agreement, Respondent shall determine the facility's generator status based on the amount of hazardous waste generated in a calendar month or accumulated on-site at any one time. Respondent shall immediately manage the hazardous waste in accordance with 10 C.S.R. Division 25, based on the facility's generator status. Within seven (7) days of ascertaining the facility's generator status, Respondent shall submit to EPA such documentation showing the determination has been performed.

(d) Within sixty (60) days of the effective date of this Agreement, Respondent shall submit to EPA documentation showing that the facility has registered with the Missouri Department of Natural Resources as a generator of hazardous waste in accordance with 10 C.S.R. 25-5.262(2)(A)1.A.

(e) Within ninety (90) days of the effective date of this Agreement, Respondent shall submit a certification and a detailed description of how Respondent is conducting all wood treating operations at the facility in compliance with the hazardous waste regulations found at 10 C.S.R. Division 25, 40 C.F.R. §262.34 and 40 C.F.R. Part 265 Subpart W based on Respondent's generator status. (A general explanation of these regulations can be found in the enclosed guidance document, "Wood Preserving Resource Conservation and Recovery Act Compliance Guide", June 1996.)

(f) For a period of one (1) year following the effective date of this Agreement, Respondent shall submit to EPA copies of all Manifests and all Land Disposal Restriction notice forms within thirty (30) days of each shipment of hazardous waste from the facility.

(g) If Respondent ceases to use the retorts for wood treatment at the facility for more than 90 days, Respondent shall comply with 40 C.F.R. 261.4(c), incorporated by reference at 10 C.S.R. 25-4.261, which states that hazardous waste generated in a manufacturing process unit is exempt from RCRA regulation unless it remains in the unit for more than 90 days after the unit ceases to be used for manufacturing. Any hazardous waste removed from the retorts shall be managed in accordance with Section 3005 of RCRA, 42 U.S.C. § 6925, RSMo § 260.390(1), and corresponding regulations.

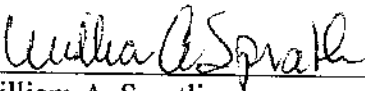
Respondent shall submit all documents required to be submitted pursuant to this Agreement, unless otherwise specified herein, to: Elizabeth Koesterer, Environmental Engineer, ARTD/RESP, U.S. EPA Region VII, 901 North 5th Street, Kansas City, KS 66101.

After all compliance and clean up activities have been completed to EPA's satisfaction, and the penalty noted above has been paid, EPA will take no further civil action against the Respondent for the specific violations of Section 3005 of RCRA and RSMO 260.390(1) described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present or future violations by the Respondent of Section 3005 of RCRA or of any other federal statute or regulation. By its first signature, EPA ratifies the Findings and Alleged Violations set forth in the Form.

Upon signing and returning this Agreement to EPA, Respondent waives its right to contest the allegations in this Agreement and the opportunity for a hearing or appeal pursuant to Section 3008 of RCRA, and consents to EPA's approval of the Agreement without further notice.

This Agreement is binding on the parties signing below, and effective upon the Regional Judicial Officer's signature.

APPROVED BY EPA:



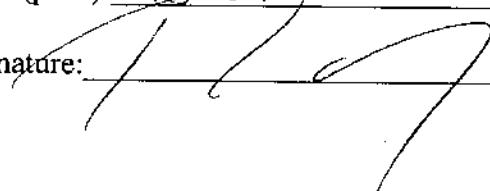
William A. Spratlin
Director
Air, RCRA and Toxics Division

Date: 1/2/03


APPROVED BY RESPONDENT:

Name (print): Ronald Berry

Title (print): President

Signature: 

IT IS SO ORDERED:


Robert Patrick
Regional Judicial Officer

Date: January 15, 2003

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
FINDINGS AND ALLEGED VIOLATIONS FORM**

Docket No. RCRA-07-2001-0010

Inspection Date: March 28-29, 2000

Berry Wood Products, Inc., Fredricktown, Missouri, (Respondent) was subject to the requirements and found to be in violation of Section 3005 of the Solid Waste Disposal Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6925. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. The State of Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Berry Wood Products, Inc., owns and operates a chemical wood treatment facility at Highway 67 South, located in Fredricktown, Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15). Respondent notified in 1991 as a small quantity generator of F032 hazardous waste. The Respondent's facility was assigned EPA identification number MOD143540375. Woodtreating operations ceased at the facility in 1997. Hazardous waste generated by Respondent include drippage of pentachlorophenol ("PCP") during the wood treating process.

Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, and RSMo § 260.390(1), it is a violation of RCRA to operate a treatment, storage or disposal facility without a permit. At the time of the March 28-29, 2000, RCRA Compliance Evaluation and Sampling Inspection at Respondent's facility, EPA observed PCP spills and contamination in the treatment area. Analytical results from sampling in the treatment area during the March 28-29, 2000, inspection detected PCP above background level in the soils which confirmed Respondent's disposal of F032 hazardous waste. At the time of the March 28-29, 2000, inspection, Respondent did not have a permit or interim status to operate a hazardous waste treatment, storage or disposal facility. Therefore, at the time of the inspection Respondent was in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and RSMo § 260.390(1).

IN THE MATTER OF Berry Wood Products, Inc., Respondent
Docket No. RCRA-07-2001-0010

CERTIFICATE OF SERVICE

I certify that the foregoing Expedited RCRA Settlement Agreement was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Alyse Stoy
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Ronald Berry, President
Berry Wood Products, Inc.
7307 HWY 67 South
Fredericktown, Missouri 65645

Dated: 1/17/03


Kathy Robinson
Regional Hearing Clerk